UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JON HONKALA	:	
	:	
v.	:	
	:	CIVIL NO. 1:06CV95
VERMONT DEPARTMENT OF CORRECTIONS	:	
AND ROBERT HOFMANN, COMMISSIONER	:	
	:	

RULING AND ORDER

The plaintiff is an inmate in the custody of the Vermont Department of Corrections. He alleges the defendants refused to place him in a work camp because of his diabetic condition, in violation of the Americans with Disabilities Act. In response, the defendants claim the plaintiff is ineligible for placement in a work camp because he is convicted of a crime defined as "violent" under applicable regulations.

After reviewing the plaintiff's complaint and accompanying motion for preliminary injunction, the Court held a status conference at which it instructed the parties to address the impact of the Supreme Court's recent decision in Woodford v. Ngo, 126 S. Ct. 2378 (2006). The Woodford Court examined the exhaustion doctrine and its impact on prisoner litigation after the passage of the Prison Litigation Reform Act of 1995 (hereinafter "PLRA). Finding the PLRA imposes a requirement of "mandatory," id. at 2382, exhaustion of administrative remedies before an inmate can bring a federal suit challenging the

conditions of his or her imprisonment, the Supreme Court explained:

> The PLRA attempts to eliminate unwarranted federal-court interference with the administration of prisons, and thus seeks to afford corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case. . . . The PLRA also was intended to reduce the quantity and improve the quality of prisoner suits. . . . Requiring proper exhaustion serves all of these goals. It gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors. This is particularly important in relation to state corrections systems because it is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.

Id. at 2387-88 (citations and quotation marks omitted).

In this case, it is undisputed that the plaintiff has not even attempted to exhaust his administrative remedies. Plaintiff argues, however, the futility doctrine survives Woodford and the defendants' consistent refusal to permit diabetics to participate in a work camp renders his exhaustion unnecessary.

The Court need not decide under what circumstances the futility exception to administrative exhaustion remains viable after Woodford. See id. at 2393 (Justice Breyer, concurring). Here, the defendants claim the plaintiff's criminal history provides the actual basis for the decision. In light of the Supreme Court's discussion of the benefits of the mandatory exhaustion now imposed under the PLRA, this seems precisely the

type of dispute which should first be addressed by state officials before a federal suit is filed.

Because the plaintiff has failed to exhaust his administrative remedies, this matter is DISMISSED without prejudice. It is further certified that any appeal taken in forma pauperis would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915.

Dated at Brattleboro, Vermont, this 4th day of August, 2006.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge